

CHAPTER NO. 90

HOUSE BILL NO. 3555

By Representatives Head, McMillan, Phillip Johnson

Substituted for: Senate Bill No. 3462

By Senator Kurita

AN ACT to enact the Montgomery County Adequate Facilities Tax.

WHEREAS, Montgomery County, Tennessee, has experienced rapid growth in its population and in demand for school facilities; and

WHEREAS, the county's present revenue raising authority is limited and relies heavily on intergovernmental transfers, which are not subject to county control, and on property taxes, which would impose the costs of new growth upon existing residents rather than on new residents creating the demand for the additional expenditures; and

WHEREAS, Montgomery County is committed to both present and future county residents to maintaining a level of services commensurate with those presently provided; and

WHEREAS, Montgomery County is prepared to impose a fair, equitable, and reasonable share of the costs of providing the necessary school facilities and services on existing residents of the county; and

WHEREAS, the county's present population, employment base, tax base, and budget cannot alone support the additional revenues needed to supply school facilities to serve new growth without a substantial increase in the property tax rate; and

WHEREAS, the continued expansion of the county's population and residential development represents both an extraordinary economic opportunity for the state of Tennessee as well as a potential economic burden on the existing residents of Montgomery County; and

WHEREAS, due to these unique circumstances, it is necessary and appropriate that Montgomery County be given authorization to extend its taxing power to enable the county to impose a fair and reasonable share of the costs of school facilities necessitated by new development on that development so as not to create an unfair and inequitable burden on existing county residents; and

WHEREAS, there is precedent in the state of Tennessee for such additional tax measures to impose costs on those who benefit the most from improvements and where the result would otherwise be to impose an unfair burden on existing residents; and

WHEREAS, the most logical and effective mechanism to accomplish the intended result would be the imposition of a new privilege tax on new development in Montgomery County and to use the revenues from such tax to provide the needed school facilities in those areas of Montgomery County that would generally be required due to the growth in that area; now, therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. This act shall be known and may be cited as the "Montgomery County Adequate Facilities Tax".

SECTION 2. As used in this act, unless a different meaning clearly appears from the context:

(1) "Board of Construction Appeals" means the board established in Montgomery County pursuant to the requirements of the Southern Building Code Congress International.

(2) "Building Permit" means a permit for a single family or multi-family residential development or any use containing dwelling units as defined below which is issued in Montgomery County, whether by the county or by any city therein.

(3) "Certificate of Occupancy" means a license for occupancy of a building or structure issued in Montgomery County, whether by the county or by any city therein.

(4) "Condominium" means a building, or group of buildings, in which the dwelling units, offices, or floor area are owned individually, and the structure, common areas, and facilities are owned by all of the owners on a proportional, undivided basis.

(5) "County Building Commissioner" means the person appointed by the County mayor charged with directing the building and codes department.

(6) "Development" means the construction, building, reconstruction, erection, extension, betterment, or improvement of land providing a building or structure or the addition to any building or structure, or any part thereof, which creates one or more new dwelling units, and includes recording an approved plat for a lot or lots to be used for a single-family or multi-family dwelling unit or units.

(7) "Dwelling Unit" means a room or rooms, connected together, constituting a separate, independent, housekeeping establishment for owner occupancy, rental or lease, on a daily, weekly, monthly, or longer basis; physically separated from any other room, rooms, or dwelling units which may be in the same structure; and containing independent cooking and sleeping facilities.

(8) "Governing Body" means the board of county commissioners of Montgomery County, Tennessee.

(9) "Lot" means a designated parcel, tract, or area of land established by plat, subdivision, or as otherwise permitted by law, to be used, developed, or built upon.

(10) "Multi-Family Dwelling" means a building containing two (2) or more dwelling units, including units that are located one over the other.

(11) "Person" means any individual, firm, co-partnership, joint venture, association, corporation, estate, trust, business trust, receiver, syndicate, or other group or combination acting as a unit, in the plural as well as the singular number.

(12) "Place of Worship" means that portion of a building, owned by a religious institution which has tax-exempt status, which is used for worship services and related functions; provided, however, that a place of worship does not include buildings or portions of buildings which are used for purposes other than for worship and related functions, or which are intended to be leased, rented, or used by persons who do not have tax-exempt status.

(13) "Plat" includes any plat, plan plot, replot or replat where the same creates additional lots.

(14) "Public Facility or Facilities" means a physical improvement undertaken by the federal, state, county, or city governments, including, but not limited to, the following: roads and bridges, parks and recreational facilities, jails and law enforcement facilities, schools, libraries, government buildings, fire stations, sanitary landfills, water, wastewater and drainage projects, airport facilities, and other governmental capital improvements benefiting the citizens of the county or city.

(15) "Residential" means the development of any property for a dwelling unit or units or any structure, including a mobile home, built for the support, shelter, or enclosure of persons, chattels, or movable property of any kind.

(16) "Single-Family Dwelling" means a building containing one dwelling unit and that is not attached to any other dwelling by any means and is surrounded by open space or yards.

(17) "Townhouse" means a single-family dwelling unit constructed in a series or group of attached units with property lines separating each unit.

SECTION 3. It is the intent and purpose of this act to impose a tax on new residential development in Montgomery County so as to ensure and require that the persons responsible for the new development share in the burdens of growth by paying their fair share for the cost of expanded school services and facilities made necessary by such development.

SECTION 4. Engaging in the act of development within Montgomery County, except as provided in Section 6, is declared to be a privilege upon which Montgomery County may levy a tax at the rate set forth in Section 7.

SECTION 5. The governing body shall, by resolution, adopt administrative guidelines, procedures, regulations, and forms necessary to properly implement, administer, and enforce the provisions of this act.

SECTION 6. This act shall not apply to:

(1) A lot or structure owned by a nonprofit corporation which is a qualified 501(c)(3) corporation under the Internal Revenue Code;

(2) Nonresidential facilities;

(3) Permanent residential structures replacing mobile homes where the mobile home is removed within thirty (30) days of the issuance of the certificate of occupancy for the permanent residential structure, provided, that the permanent structure is a

residence for the owner and occupant of the mobile home and the owner and occupant has resided on the property;

(4) Places of worship;

(5) Public buildings;

(6) Replacement structures for previously existing habitable structures destroyed by fire or other disaster, or voluntarily demolished, when the building permit is issued within twenty-four (24) months of being destroyed or demolished. This exemption applies only to the number of units destroyed or demolished;

(7) Platted lots of record, meaning a lot or lots that exist as shown or described on a plat in the records of the local register of deeds, and which was recorded prior to the effective date of this act; or

(8) Any lot on which the tax imposed pursuant to this act has been previously paid.

SECTION 7. For the exercise of the privilege described herein, the governing body imposes a tax of two hundred fifty dollars (\$250) on each lot to be used for a single-family residential dwelling unit or units or multi-family dwelling unit or units, and a tax of two hundred fifty dollars (\$250) on each single-family residential dwelling unit or units or multi-family dwelling unit or units, increasing six percent (6%) annually to a combined maximum of one thousand dollars (\$1,000) as follows:

(1) That portion of the tax imposed on each lot to be used for a single-family or multi-family dwelling unit or units shall be collected by the Montgomery County register of deeds, at the time the approved plat is recorded.

(2) That portion of the tax imposed on each single-family or multi-family dwelling unit or units shall be collected by the Montgomery County building and codes department at the time the building permit is issued.

(3) In the event a single-family or multi-family dwelling unit is placed upon property and a plat is not required by applicable provision of the general law, that portion imposed on each lot shall be collected by the Montgomery County building and codes department at the time the building permit is issued.

(4) For condominiums or townhouses where each dwelling unit is individually owned, each separate unit shall be taxed at the combined rate of five hundred dollars (\$500) and collected by the Montgomery County building and codes department at the time the building permit is issued.

(5) The initial tax shall be increased annually by six percent (6%) as follows:

Fiscal Year Beginning	Combined Rate	Rate Per Lot	RatePer Dwelling Unit
(Initial Tax)	\$500.00	\$250.00	\$250.00
July 1, 2005	530.00	265.00	265.00

July 1, 2006	562.00	281.00	281.00
July 1, 2007	596.00	298.00	298.00
July 1, 2008	632.00	316.00	316.00
July 1, 2009	670.00	335.00	335.00
July 1, 2010	710.00	355.00	355.00
July 1, 2011	752.00	376.00	376.00
July 1, 2012	798.00	399.00	399.00
July 1, 2013	846.00	423.00	423.00
July 1, 2014	896.00	448.00	448.00
July 1, 2015	950.00	475.00	475.00
July 1, 2016	1,000.00	500.00	500.00

SECTION 8. Proceeds from the tax levied herein shall be applied to school services, capital projects, or the related debt service for new school construction including the renovation of and additions to existing school facilities as appropriated annually by the Montgomery County board of commissioners.

SECTION 9. The county building commissioner shall collect that portion of the tax established in this act to be collected at the time of application for a building permit. If the county issues the building permit, the county building commissioner or other responsible official shall receive payment in full in cash or other negotiable instrument as specified by resolution of the county and as approved by the county attorney. If the building permit is issued by one of the incorporated cities of Montgomery County, the city shall, before issuance of the building permit, require evidence by a valid certificate executed by the county building commissioner, that the full amount of the tax due the county has been paid. The issuance of a building permit by any city official, without the certificate from the county that the tax has been paid, shall render the city liable to the county for the sum or sums that would have been collected by the county had the certificate of tax paid been required by the city.

SECTION 10. The authority to impose this privilege tax on new development in Montgomery County is in addition to all other authority to impose taxes, fees, assessments, or other revenue raising or land development regulatory measures granted either by the private or public acts of the state of Tennessee, and the imposition of the tax, in addition to any other authorized tax, fee assessment or charge, shall not be deemed to constitute double taxation.

SECTION 11. Any person aggrieved by the decision of the county building commissioner or other responsible official concerning any aspect of this act may obtain review of the official's decision in the following manner:

(1) By payment of the disputed amount to Montgomery County and by notifying the official that the payment is made under protest.

(2) By requesting an appeal of the decision of the official in written form within thirty (30) days of the protest and payment. Appeals shall be heard by the Montgomery County board of construction appeals. Hearing shall be scheduled within forty-five (45) days of the written request for appeal.

The board of construction appeals shall render a decision on all hearings within thirty (30) days of the hearing date, unless the hearing is continued from time to time by a majority vote of the board for further information.

The board of construction appeals shall act as a quasi-judicial body whose purpose is to determine the intent of this act, its applicability to the appellant, and to rule upon the interpretation of the official.

The board will not be bound by formal rules of evidence applicable to the various courts of the state.

Hearings before the board shall proceed as follows:

(1) The county building commissioner or other responsible official shall explain the ruling and the reason for the ruling.

(2) The appellant shall explain the reasons for protesting the ruling.

(3) The board may request further information from any county official, including, but not limited to, the county mayor, county commissioners, or committee members, the county attorney, or the county planning staff. The board will not have the power of subpoena.

(4) The board will deliberate and render a decision by a majority vote. Decisions will be reduced to writing and copies shall be sent to all parties and shall become a part of the minutes of the board. Decisions of the board of construction appeals shall be final, except that either the county building commissioner, other responsible official, or the person aggrieved may seek review of the board's action by certiorari and supersedeas to the chancery court of Montgomery County, Tennessee, provided that an application to the court is made within sixty (60) days of the written decision of the board.

SECTION 12. The provisions of this act shall in no manner repeal, modify, or interfere with the authority granted by any other public or private law applicable to Montgomery County. This act shall be deemed to create an additional and alternative method for Montgomery County to impose and collect taxes for the purpose of providing public facilities.

SECTION 13. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 14. This act shall have no effect unless it is approved by a two-thirds (2/3) vote of the county legislative body of Montgomery County. Its approval or nonapproval shall be proclaimed by the presiding officer of the county legislative body and certified by such officer to the secretary of state.

SECTION 15. For the purpose of approving or rejecting the provisions of this act, it shall be effective upon becoming a law, the public welfare requiring it. For all other purposes, it shall become effective July 1, 2004, subject to local approval as provided in Section 14

PASSED: March 15, 2004


JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES


JOHN S. WILDER
SPEAKER OF THE SENATE

APPROVED this 25th day of March 2004


PHIL BREDESEN, GOVERNOR